REMARKS

I. Introduction

The claims now in the case are 1-44, amended claim 47 and claims 48-76.

II. Claim Rejections Under 35 U.S.C. § 101

Applicant again traverses the Examiner's 35 U.S.C. § 101 rejection. And, in so doing, notes that the rejection initially issued before the *In re Bilski* guidelines of August 24, 2009. In view of the August 24 guidelines it is clear that claims 1-44 are statutory subject matter under 35 U.S.C. § 101, which by its own terms requires that it be implemented in an administrative system having a server with a risk assessment module; thus claim 1 is implemented by a particular machine and the machine imposes a meaningful limit on the claim's scope. With both of these questions answered positively, even the Office's guidelines say the method is eligible as a statutory process.

It is further pointed out again, as it was in response to the February 11, 2009 Office Action, the claims have been amended to add that generation of risk status is in an administrative system that has a centralized server having a risk assessment module. The basis for this was the published specification numbered paragraph [0019] and [0035]. It is acknowledged that *Bilski* does say that a system or process must either be tied to a machine or transform underlying subject matter, such as an article or materials. Here the patient data risk is tied to a machine. In this instance the claim amendments to claims 1 and 34 are in the body of the claim, not to the preamble, and they clearly tie the claim to a machine under category (1) defined by *Bilski* as statutory subject matter. It is submitted that under the Court's Opinion amended claims 1 and 34 are clearly statutory, and are now in accord with *In re Bilski*. Applicant notes to the Examiner in *Bilski* 545 F.3d 943 in addressing claim 62 of Abele's *Bilski* said that dependent claims were drawn to a patent eligible subject matter where it specified that the said data is x-ray attenuation data produced in two-dimensional fields by computerized "tomography scanner". Clearly if this dependent claim in Abele as commented on by *Bilski* illustrates proper 35 U.S.C. § 101 subject matter, amended claims 1 and 34 here represent proper subject matter under 35 U.S.C. § 101.

Finally with regard to 35 U.S.C. § 101, it is noted that *In re Bilski* and its tied to a machine or transfer an underlying object test, is likely to be modified as erroneous application of

the law. *Bilski* will be argued November 9, 2009 before the Supreme Court. Clearly if the Court was "content" with the Federal Circuit's new test, *certiorari* would not have been granted. More likely that the Court will revert to the traditional time honored test of "process" under 35 U.S.C. § 101 as defined in, for example, Cochrane v. Deener, 94 U.S. 780 (1876), "mode of treatment of materials or things to produce a given result." With this test the claims are clearly statutory. In sum the claims are statutory under the current *Bilski* test as the August 24 guidelines note, are statutory under the previous definition of process and are statutory under the pre-*Bilski* Supreme Court Test of "process". It is noted that the Examiner has not expressed reasoning to support his bald assertion that the claims are not "tied to a machine nor do they execute a transformation". Even casual examination of claim 1 reveals error of this statement. Reconsideration of the 35 U.S.C. § 101 rejection is requested.

III. Claim Objection Under 35 U.S.C. § 112

It is noted in paragraph 9 that claims 47-68 and 74 were rejected under 35 U.S.C. § 112, second paragraph. The Examiner's theory of an "IF-THEN-ELSE" logical block is mooted by claim amendments. Claim 47 has been amended to remove the objection now believed to be rendered moot. Claim 47 now positively recites what occurs when the confirmation is not given.

IV. Claim Rejections Under 35 U.S.C. § 103

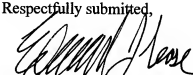
Claim1, 2, 4, 6-8, 26-27, 29-32, 69-71, 73 and 75-76 were rejected, again citing the previously cited Rao and Sato in view of a newly cited reference Russek (U.S. 5,319,355). Russek is cited for the same proposition as the previous Condurso reference which was removed by a claim of priority under 35 U.S.C. § 119. The Examiner argues Russek further discloses direction as transmitted to a healthcare provider in response to non-receipt of a confirmation that a previously directed healthcare provider has attended the patient within a corresponding time, citing Russek at column 8, lines 20-30; column 9, lines 22-59; column 12, lines 37-50; column 13, lines 14-19; and column 14, lines 16-26. Even a casual examination of the cited places in Russek shows certain conditions trigger an alarm which can only be silenced or temporarily silenced by operation of a manual switch located near the patient's bedside. This is not the same thing as transmitting a direction to a healthcare provider as a response to non-receipt of a

confirmation that a previously directed healthcare provider has attended the patient within a corresponding time period, as required by the claims. Russek relates to a physical presence alarm used in the hospital, not information processing as to whether or not there has been adequate medical management of a patient. Quite a different thing! As pointed out before there are missing elements from each independent claim from the combination of Rao, Sato, and now Russek. The Supreme Court's latest pronouncement on obviousness in KSR has suggested that claim elements missing from the Examiner's analysis is an indication of nonobviousness. Reconsideration and allowance of the claims in view of the amendments here presented and the remarks are requested.

V. Conclusion

No fees or extensions of time are believed to be due in connection with this amendment; however, consider this a request for any extension inadvertently omitted, and charge any additional fees to Deposit Account No. 26-0084.

Respectfully submitted,



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